

Republic of the Philippines  
**ENERGY REGULATORY COMMISSION**  
San Miguel Avenue, Pasig City



**RESOLUTION NO. 12, Series of 2013**

**A RESOLUTION ADOPTING A PRO-FORMA SUPPLIER OF LAST RESORT (SOLR) CONTRACT BETWEEN A SOLR AND A CONTESTABLE CUSTOMER UPON RETAIL COMPETITION AND OPEN ACCESS (RCOA)**

**WHEREAS**, on January 18, 2006, the Commission promulgated the Distribution Services and Open Access Rules (DSOAR) which aims to provide the terms and conditions pertaining to Distribution Connection Assets and Services, Service to the Captive Market, Supplier of Last Resort, Service to the Contestable Market, Unbundled Wheeling Service and Guidelines for Establishing Regulated Service Rates;

**WHEREAS**, on February 22, 2010, the Commission promulgated the Amended DSOAR in view of the new regulatory regimes that were adopted for private utilities and electric cooperatives, such as the Performance-Based Regulation (PBR) and Rules for Setting Electric Cooperatives' Wheeling Rates (RSEC-WR), respectively;

**WHEREAS**, the Amended DSOAR requires distribution utilities to adopt pro-forma agreements in preparation for Retail Competition and Open Access (RCOA);

**WHEREAS**, on February 11, 2013, the Commission received a petition for the adoption of a pro-forma Supplier of Last Resort (SOLR) between a SOLR and a contestable customer upon RCOA docketed as ERC Case No. 2013-001 RM;

**WHEREAS**, on February 28, 2013, the proposed pro-forma SOLR Contract Agreement was posted on the Commission's website directing all interested parties to file their respective comments thereon on or before March 11, 2013;

**WHEREAS**, on March 20, 2013, a public consultation was conducted in the Commission's Main Office to discuss the comments submitted by the following stakeholders: a) Manila Electric Company

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(MERALCO); b) Visayan Electric Company, Incorporated (VECO); c) Retail Electricity Suppliers Association (RESA); and d) Distribution Management Committee (DMC);

**WHEREAS**, after a careful consideration of the comments submitted by interested parties, the Commission deems it appropriate to adopt a pro-forma SOLR Contract to facilitate the smooth transition to a regime in which RCOA is already in place, to afford contestable customers the opportunity to evaluate it within a reasonable period prior to its commercial operations and to enable them to ease into the retail market;

**NOW, THEREFORE**, be it **RESOLVED**, as the Commission hereby **RESOLVES** to **ADOPT** a pro-forma SOLR Contract (*copy hereto attached as Annex "A"*).

This Resolution and the attached pro-forma SOLR Contract shall take effect after fifteen (15) days following the completion of their publication in a newspaper of general circulation in the Philippines.

Let copies of this Resolution be furnished the University of the Philippines Law Center-Office of the National Administrative Register (UPLC-ONAR) and all distribution utilities.

**Pasig City, June 17, 2013.**

  
**ZENAIDA G. CRUZ-DUCUT**  
Chairperson *granted*

  
**MARIA TERESA A.R. CASTAÑEDA**  
Commissioner

  
**JOSE C. REYES**  
Commissioner

  
**ALFREDO J. NON**  
Commissioner

(On Official Travel)  
**GLORIA VICTORIA C. YAP-TARUC**  
Commissioner

**SUPPLIER OF LAST RESORT CONTRACT  
(SOLR Contract)**

This **Contract** is made and entered in \_\_\_\_\_ City,  
\_\_\_\_\_, Philippines, this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, by and between:

\_\_\_\_\_ (**DU**), a corporation duly organized  
and existing under the laws of the Philippines, with principal offices at  
\_\_\_\_\_, *in its capacity as a*  
*Supplier of Last Resort (SOLR)*, hereinafter referred to as "**DU-**  
**SOLR**", represented by its (*indicate DU-SOLR head*), Mr.  
\_\_\_\_\_ (designation) and Mr. \_\_\_\_\_  
(designation);

**-and-**

\_\_\_\_\_ duly organized and existing under the laws of the Philippines,  
with \_\_\_\_\_ offices \_\_\_\_\_ at  
\_\_\_\_\_ hereinafter  
referred to as "**CONTESTABLE CUSTOMER**", represented by its  
\_\_\_\_\_.

"**DU-SOLR**" and "**CONTESTABLE CUSTOMER**" shall collectively be  
referred to as "**PARTIES**";

**WITNESSETH THAT:**

**WHEREAS**, under Section 1.6.3 of the Distribution Services  
and Open Access Rules (DSOAR), as amended, all Distribution  
Utilities (DUs) shall perform the duties and obligations as Suppliers of  
Last Resort (SOLR) for the Contestable Market within their respective  
franchise;

**WHEREAS**, **DU-SOLR** was designated by the ERC to serve as  
the SOLR for the Contestable Market in its franchise area.

**WHEREAS**, the **CONTESTABLE CUSTOMER** is among those  
End-users certified by the ERC to be part of the Contestable Market;

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**WHEREAS**, the **CONTESTABLE CUSTOMER** has ceased to receive service from its RES arising from the occurrence of any Last Resort Supply Event (LRSE), as provided under Section 2 of ERC Resolution No. 35, Series of 2006, entitled: "A Resolution Adopting the Rules for the Supplier of Last Resort ("SOLR Rules"), as may be amended;

**WHEREAS**, the **PARTIES** have agreed to enter into this Contract subject to rules and regulations of the ERC and other applicable laws, rules and regulations;

**NOW, THEREFORE**, the foregoing premises considered, the **PARTIES** hereby mutually agree as follows:

**I. GENERAL TERMS AND CONDITIONS GOVERNING SUPPLY OF ENERGY**

**Section 1.1. Scope.** This Contract is for the supply of electricity to the **CONTESTABLE CUSTOMER** by the **DU-SOLR**, upon payment of all appropriate charges as may be approved by the ERC.

**Section 1.2. Supply of Electric Energy and Delivery Point.** The **DU-SOLR** shall supply electric energy to the **CONTESTABLE CUSTOMER** at the premises located at \_\_\_\_\_. The electric energy to be delivered shall be alternating current at approximately \_\_\_\_\_ volts, \_\_\_\_\_ wire, \_\_\_\_\_ hz, \_\_\_\_\_ phase at \_\_\_\_\_, the point of delivery.

**Section 1.3. Contracted Capacity and Guaranteed Minimum Billing Demand.** The capacity contracted by the **CONTESTABLE CUSTOMER** is hereby fixed at \_\_\_\_\_ kW, with a Guaranteed Minimum Billing Demand (GMBD) equivalent to \_\_\_\_\_ kW. The monthly minimum bill shall either be the demand charge corresponding to the GMBD or the tariff minimum of Php \_\_\_\_\_, which is initially based on the SOLR rates specified in the relevant rules and regulations of the ERC, and shall subsequently be based on the schedule of rates approved by ERC (see **Annex "A"**). The minimum billing demand shall be subject to the rates approved by the ERC.

**Section 1.4. Use of Electric Energy.** The electricity supplied hereunder shall be used strictly by the **CONTESTABLE CUSTOMER**

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in direct connection with its business and shall not be sold or supplied to any other person or entities, unless otherwise allowed by law, rule or regulation of the ERC.

## **II. BILLINGS AND CHARGES**

**Section 2.1. Monthly Billing.** The **DU-SOLR** shall bill the **CONTESTABLE CUSTOMER** monthly for all the consumption and charges stipulated under this Contract, including such other charges as may be approved by the ERC. The **CONTESTABLE CUSTOMER** shall pay the **DU-SOLR** all amounts due, as shown in the schedule of rates approved by the ERC (**Annex "A"**), as may be amended, including any adjusted or differential bill/s rendered, within seven (7) calendar days from receipt of the bill or as agreed upon by the **PARTIES**.

The **CONTESTABLE CUSTOMER** may dispute any bills in writing within fifteen (15) calendar days from receipt of the bill or as agreed upon by the parties. Failure to dispute any bill on time shall constitute an agreement by the **CONTESTABLE CUSTOMER** that the bill is accurate and binding. Disputed bills shall be paid by the **CONTESTABLE CUSTOMER** without any deduction or offset and shall not be an excuse or ground for the **CONTESTABLE CUSTOMER** to delay payment of succeeding bills or to unilaterally deduct any amount therefrom.

**Section 2.2. Bill Deposit.** A bill deposit shall be paid by the **CONTESTABLE CUSTOMER** to the **DU-SOLR**, equivalent to two (2) months total estimated billing, based on the average of previous six (6) months-demand and energy usage, as provided for under the DSOAR, as amended, SOLR Rules and other relevant rules and regulations. In the event that the **CONTESTABLE CUSTOMER's** subsequent monthly bills are more or less than the estimated amount, as provided in the DSOAR, such deposit shall be immediately adjusted to approximate the **CONTESTABLE CUSTOMER's** monthly billing. Notwithstanding this deposit, the **DU-SOLR** may discontinue service in case the **CONTESTABLE CUSTOMER** is in arrears in the payment of bills or for failure to pay the adjusted or differential bills.

Subject to Section 2.5 of this Contract, this deposit shall be fully refundable upon termination of **DU-SOLR** service, as provided in the applicable rules and regulations.

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**Section 2.3. Termination fee.** In the event that the **CONTESTABLE CUSTOMER** requests the pre-termination of the Agreement for whatever reason, it shall notify the **DU-SOLR** in writing, within the ten(10)-day calendar period prescribed in Section 6.2 hereof. Should such notice be received by the **DU-SOLR** less than ten (10) calendar days prior to the **CONTESTABLE CUSTOMER's** intended termination date, or should the intended pre-termination date fall prior to the lapse of one (1) month as provided in Section 6.1, the **CONTESTABLE CUSTOMER** shall pay to the **DU-SOLR** a termination fee, as may be approved by the ERC.

**Section 2.4. Other Fees as may be approved by the ERC.** Should there be other fees such as switching fee and special meter reading fee, it should be subject to approval of the ERC.

**Section 2.5. Final and Outstanding Bill/s.** If the **CONTESTABLE CUSTOMER** transfers from the **DU-SOLR** to a RES or Local RES, or if **DU-SOLR** service is terminated due to non-payment of bills, the final bill or any outstanding bill/s of the **CONTESTABLE CUSTOMER** shall be offset against the **CONTESTABLE CUSTOMER's** deposit and the remaining balance and interest earned, if any, shall be refunded to the **CONTESTABLE CUSTOMER** within thirty (30) calendar days from the final meter reading date. If there is a deficiency, the **CONTESTABLE CUSTOMER** shall first pay all outstanding obligations to the **DU-SOLR**, whether disputed or not, before switching to another supplier of electricity. Notwithstanding such transfer to another supplier, the **DU-SOLR** shall have the right to request the disconnection of the service of the **CONTESTABLE CUSTOMER** for any outstanding obligations.

### III. DISCONNECTION AND INTERRUPTION OF SERVICE

**Section 3.1. Failure to Pay Bill on Due Date.** In the event the **CONTESTABLE CUSTOMER** fails to pay the **DU-SOLR** for services rendered on the due date, the **DU-SOLR** may send a 48-hour notice of disconnection to the **CONTESTABLE CUSTOMER**, and the **DU** shall simultaneously be informed of such notice. If the **CONTESTABLE CUSTOMER** fails to pay the amount within the 48-hour period, the **DU-SOLR** shall have the right to request the **DU**, through the Central Registration Body (CRB), to disconnect the said **CONTESTABLE CUSTOMER's** service, and the **DU** shall execute such request within 24 hours from receipt of such instruction. The **CONTESTABLE CUSTOMER's** service shall not be reconnected until

all of its obligations are settled and the deposits are sufficient to cover its services.

**Section 3.2. Execution of Routine Maintenance and Similar Acts.** The DU-SOLR may interrupt the service *upon request from or reasonable notice* to the **CONTESTABLE CUSTOMER**, in order to execute any routine maintenance, repairs or modification to the DU-SOLR's, DU's or **CONTESTABLE CUSTOMER's** facilities and nearby facilities and for the purpose of ensuring the integrity, completeness, accuracy, safety and reliability of the connections to the distribution facilities and for any other legitimate purpose.

**Section 3.3. Emergency Conditions and/or Unsafe Operating Conditions.** The DU-SOLR may also interrupt the service at any time, *with or without notice*, in the event of an emergency or to correct unsafe operating conditions in the connection facilities, or, *with due notice*, when the **CONTESTABLE CUSTOMER** is no longer compliant with the provisions of the DSOAR, as amended, Philippine Distribution Code (PDC), other applicable laws, or this Agreement.

**Section 3.4. Failure to comply with the terms and conditions of this Contract.** The DU-SOLR shall have the right to discontinue service to the **CONTESTABLE CUSTOMER** at any time such **CONTESTABLE CUSTOMER** violates any of the terms and conditions of this Contract, or any applicable laws, rules and regulations, pursuant to Section 3.1 of this Contract.

**Section 3.5. Other circumstances.** The DU-SOLR also reserves the right to discontinue service of the **CONTESTABLE CUSTOMER** in case of termination of this Contract pursuant to Sections 6.2 and 6.3 hereof and other circumstances allowed by law and relevant rules and regulations.

In no case shall the DU-SOLR's exercise of its rights under this Article III exempt the **CONTESTABLE CUSTOMER** from its obligation to pay any and all of its outstanding obligations to the DU-SOLR.

#### IV. RECONNECTION OF SERVICE

The DU-SOLR shall request the reconnection of the service of the **CONTESTABLE CUSTOMER** from the DU, through the CRB, under the following instances, and upon payment of all outstanding

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obligations and appropriate reconnection fees as approved by the ERC:

**Section 4.1.** In case of the circumstances under Sections 3.1, 3.3 and 3.4, when the **CONTESTABLE CUSTOMER** settles its obligations with the **DU-SOLR** and/or presents proof that its violation of the terms and conditions of this Contract, the DSOAR as amended, PDC and other applicable laws has been corrected and has ceased, as the case may be.

**Section 4.2.** In case of the circumstances under Sections 3.2 and 3.3, upon termination of any routine maintenance, emergency, unsafe conditions and other similar circumstances.

## **V. LIABILITIES AND OBLIGATIONS**

**Section 5.1. Provision of Electric Energy.** The **DU-SOLR**'s liability to the **CONTESTABLE CUSTOMER**, with respect to its provision of electric energy to the **CONTESTABLE CUSTOMER** shall be limited to those set forth in the DSOAR, as amended, and other applicable laws, rules and regulations of the ERC.

**Section 5.2. Undelivered Energy.** The **CONTESTABLE CUSTOMER** understands and agrees that the **DU-SOLR** shall not be liable for any undelivered energy as a result of disconnection of its service and/or termination of this Agreement on the grounds provided herein.

**Section 5.3. Force Majeure/Fortuitous Event/Other Event.** The **DU-SOLR** shall not be liable to the **CONTESTABLE CUSTOMER** with respect to the non-performance of any of its obligations under this Contract in the event and to the extent that such non-performance is the direct result of or has been directly caused by force majeure and fortuitous event including other event that are beyond the control of the **DU-SOLR**. Force majeure and fortuitous event including other event shall mean such (i) event that is not within the reasonable control, directly and indirectly, of the **DU-SOLR**; and (ii) such event, which despite the exercise of reasonable diligence, cannot be prevented, avoided or removed by the **DU-SOLR**; Provided that, the **DU-SOLR** has taken all reasonable precautions, due care and reasonable measures in order to avoid the effect of such event on the **DU-SOLR**'s ability to perform its obligations under this Contract. These events shall include, but may not be limited to the following:



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- a. A typhoon, storm, tropical depression, flood, drought, volcanic eruption, earthquake, tidal wave or landslide;
- b. An act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion or any violent or threatening actions;
- c. Non system-wide and system-wide Transmission constraints and/or outages in the Transmission and Distribution system; and
- d. Any lawful orders rendered by competent authority, including any advice or warnings of government authorities for safety reasons.

**Section 5.4. Damages and Other Costs.** The DU-SOLR shall not be liable for any damages, whether direct or consequential, including without limitation, loss of profits, loss of revenue, or loss of production capacity, as a result of interruption of electric service, except as maybe provided by law or government rules and regulations.

## **VI. EFFECTIVE TERM AND TERMINATION OF AGREEMENT**

**Section 6.1. Effective Term.** The effectivity of this Contract shall commence upon the last actual meter reading made on the **CONTESTABLE CUSTOMER**'s consumption, prior to being served by the **DU-SOLR**, and shall terminate no sooner than the lapse of one (1) month, subject to Section 2.3 of this Contract. The term hereof shall automatically be renewed from month to month, unless this Contract is terminated pursuant to Section 6.2 or 6.3.

**Section 6.2. Termination of Contract.** This Contract may be terminated by the **CONTESTABLE CUSTOMER** by sending a written notice of termination within ten (10) calendar days from the date of intended termination by said **CONTESTABLE CUSTOMER**. Otherwise, the **CONTESTABLE CUSTOMER** shall continue to be liable for all billings and charges for the succeeding billing month/s as provided in this Contract.

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**Section 6.3. Other Grounds for termination of Contract.**

This Contract may likewise be terminated by **DU-SOLR**: (i) after due notice, for violation of any of the obligations set forth herein by any party; and/or (ii) without any need of prior notice: (a) when this Contract is rendered invalid and/or unenforceable by law or competent authority; (b) when the performance of any obligations under this Contract has been rendered legally or physically impossible; or (c) in case of violation of R.A. 7832 otherwise known as "*Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994*" by the **CONTESTABLE CUSTOMER**. Upon termination or expiration of this Contract, all rights and obligations of the **PARTIES** hereunder shall cease, except (a) such rights and obligations as may have accrued as of the date of termination or expiration, such as but not limited to payment of any outstanding bills; and (b) any right or obligation which survives the termination of this Contract.

**VII. MISCELLANEOUS PROVISIONS**

**Section 7.1. Governing Laws.** This Contract will be interpreted, governed and construed under the laws of the Republic of the Philippines.

**Section 7.2. Venue.** Venue of any action arising hereunder or related to this Contract shall exclusively be at the city where the **DU-SOLR's** principal place of business is located.

**Section 7.3. Invalidity of Provisions.** If any provision of this Contract is declared by a competent court to be invalid or unenforceable, the invalidity or unenforceability of such provisions shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

**Section 7.4. Amendment/Modification of Contract.** This Contract shall not be amended or modified except in writing by both **PARTIES**. The failure of any Party, at any time, to require performance of any provision hereof shall in no manner affect the right to enforce the same at a later time. No waiver by any Party of the breach of any term or covenant contained in this Contract, whether by conduct or otherwise, shall be deemed to be construed as a further continuing waiver of such breach or waiver of the breach of any other term or covenant, unless such waiver is in writing.

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**Section 7.5. Warranties.** The **PARTIES** represent and warrant to each other that: (i) the signatories to this Contract are duly authorized to sign this Agreement; and (ii) all requisite authorizations, approvals, permits or consent to make this Agreement or any amendment or supplement thereto valid and enforceable have been obtained.

**Section 7.6. Assignment of Rights.** The **CONTESTABLE CUSTOMER** shall not assign its rights under this Agreement.

The **CONTESTABLE CUSTOMER** shall advise the **DU-SOLR** in writing, of any change in its **COMPANY** name, or status brought about by merger, consolidation, amendment of articles of incorporation, sale of business or transfer of ownership, within thirty (30) calendar days from the effective date thereof.

**Section 7.7. Disputes.** If any dispute shall arise between the **PARTIES** in connection with or arising out of this Contract, either party may request in writing to meet within ten (10) calendar days from occurrence thereof and attempt to resolve the dispute. In the event that such dispute remains unresolved within thirty (30) calendar days after such request, the aggrieved party may bring the dispute for resolution by the ERC or the regular court as the case may be. In case of the latter, the **PARTIES** hereby agree that the venue for any court action shall be the regular courts of the city where the principal business office of the **DU-SOLR** is located.

**Section 7.8. Conflict.** In the event that there is a conflict between the provisions of this Agreement and the provisions of the **DSOAR**, as amended, or such other relevant rules and regulations, the latter shall prevail.

**IN WITNESS WHEREOF**, the **PARTIES** hereto have caused the foregoing instrument to be executed by their respective officers and/or their representatives, thereunto duly authorized at the place and on the date first above written.

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Signature Over Printed Name  
 (Designation)  
 (**DU-SOLR**)  
 (Date Signed)

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Signature Over Printed Name  
 (Designation)  
 (**CUSTOMER**)  
 (Date Signed)

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**SIGNED IN THE PRESENCE OF:**

\_\_\_\_\_  
 (Witness Name, Signature Over  
 Printed Name)

\_\_\_\_\_  
 (Witness Name, Signature Over  
 Printed Name)

**ACKNOWLEDGMENT**

**Republic of the Philippines     )**  
**Pasig City                             ) S.S.**

**BEFORE ME**, a Notary Public in and for the City of \_\_\_\_\_, Philippines, this \_\_\_ day of \_\_\_\_\_, personally appeared the following persons with their respective proofs of identity:

Name	Identification Document Presented	Date and Place of Issue

known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their free and voluntary act and deed as well as that of the COMPANY they represent.

This Contract consists of \_\_\_\_ (\_\_) pages including this page on which the Acknowledgment is written, signed by the **PARTIES** and their instrumental witnesses on each page, and sealed with my notarial seal.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my notarial seal on the date and at the place first above written.

Doc. No. \_\_\_\_\_;  
 Page No. \_\_\_\_\_;  
 Book No. \_\_\_\_\_;  
 Series of 2013.